

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James O. Browning

CASE NO. CIV 07-901 JB

DATE: June 9, 2009

TITLE: *Rodriguez, et al. v. City of Albuquerque*

COURTROOM CLERK: K'Aun Wild

COURT REPORTER: Danna Everett

COURT IN SESSION: 10:02 a.m.

COURT IN RECESS: 11:08 a.m.

TYPE OF PROCEEDING: Motion Hearing (see below)

COURT'S RULINGS/DISPOSITION:

1. Motion for Collective Action Certification [52] - **TAKEN UNDER ADVISEMENT - INCLINED TO GRANT**
2. Motion for Leave of Court to File Dispositive Motion on the Basis of Stare Decisis [55] - **GRANTED IN PART AND DENIED IN PART**

ORDER CONSISTENT WITH COURT'S RULING TO BE PREPARED BY: Court

ATTORNEYS PRESENT FOR PLAINTIFF(S): **ATTORNEYS PRESENT FOR DEFENDANT(S):**

Sam Bregman

Edward Bergmann

Paul Livingston

Michael Garcia

PROCEEDINGS:

Court in Session: 10:02 a.m.

Court: Calls case. Counsel enter appearances.

MOTION FOR COLLECTIVE ACTION CERTIFICATION [52]

Mr. Bregman: Do not have a lot in way of argument to add to briefing submitted. Responds to Court's inquiry regarding jurisdiction.

10:06 a.m. Mr. Bergmann: Argues in response in opposition to motion. Cannot be ready for trial in August if Court certifies class.

10:33 a.m. Mr. Bregman: Argues in reply in support of motion.

10:42 a.m. Mr. Bergmann: Responds to Court's inquiry.

10:44 a.m. Court: Inclined to think do have jurisdiction. Have thought about unusual posture

of case, but given that it appears all parties agree that the workers in these 2 cases are common does not seem to make sense to deal with only 4 - inclined to certify as collective action. Will look further to make sure there is no procedural impediment. Takes under advisement, but inclined to grant.

MOTION FOR LEAVE OF COURT TO FILE DISPOSITIVE MOTION ON THE BASIS OF STARE DECISIS [55]

10:46 a.m. Court: Do not know enough about merits to make determination as to whether will follow what Judge Herrera did, so not inclined to say will just follow what she did. Not sure *stare decisis* requires this Court to follow Judge Herrera. If that is the heart of the motion, inclined to deny. On the other hand, if asking Court to look into merits to see if agree will Judge Herrera will allow motion.

10:49 a.m. Mr. Bergmann: Argues in support of motion. Suggests motion would be in form of MSJ. Responds to Court's inquiry.

Court: Inclined to deny motion on *stare decisis* and grant to allow filing of MSJ if parties can agree on facts, but not inclined to allow MSJ if there are genuine issues of material fact.

Mr. Bergmann: Amenable to Court's proposed resolution.

Mr. Bregman: Fine with Court's proposed resolution.

Court: Denies motion to allow filing a motion just saying this Court should follow what Judge Herrera did - City can certainly argue should follow what she did. Will grant City's request to file MSJ to the extent parties agree on statement of facts - that the genuine issue of material facts are not disputed - if cannot agree will proceed with trial - if can agree on summary proceedings for trial Court is in favor of that - if cannot agree on procedures will likely need to re-group. Suggests shorter time period (10, 15, 30 days) to see if can agree on statement of genuine issue of material facts. 30 days, 30 days and within 15 days file cross MSJ's.

Mr. Bregman: Fine.

Mr. Bergmann: Fine. Concerned with timing of trial setting.

Court: Suggests if parties agree in 30 days on the facts, then they are basically telling each other and the Court do not need trial. Will vacate trial if agreement - if do not agree will be going to trial on 8/10. Anything on further?

Counsel indicate there is nothing.

Court: Recalls PTC is set on 7/17 - suggests keeping that setting pending a determination of whether summary proceedings will work.

Counsel amenable to same.

Court: If does not work call CRD and will vacate PTC. Anything further?

Counsel indicate there is nothing.

Court in recess: 11:08 a.m.